

## **COMPREHENSIVE AGREEMENT**

**THIS COMPREHENSIVE AGREEMENT** (“Agreement”) in accordance with the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”), Va. Code §56-575.1, et seq., is entered into as of the 14th day of September, 2007, by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), **VIRGINIA PERFORMING ARTS FOUNDATION**, a Virginia non-stock corporation (the “Foundation”) and **RICHMOND PERFORMING ARTS CENTER L.L.L.P.**, a Virginia limited liability limited partnership (the “LLLP”).

### **Recitals**

R-1. On or about March 27, 2007, the City received an unsolicited conceptual proposal from the Foundation (the “Conceptual Proposal”) pursuant to Virginia’s Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”), Va. Code §56-575.1, et seq., to (i) finance, redesign, rehabilitate, operate, maintain and manage the historic Carpenter Theatre (the “Carpenter Theatre”) located on the northeast corner of 6<sup>th</sup> Street and Grace Street in downtown Richmond, Virginia, (ii) finance, design, construct, operate, maintain and manage a new performing arts facility on property owned by the Foundation located east of and adjacent to the Carpenter Theatre, and (iii) operate and manage the Landmark Theater (the “Landmark Theater”) owned by the City and located on the northwest corner of the intersection of North Laurel Street and Main Street in the City of Richmond, Virginia (all collectively referred to as the “Project”).

R-2. Pursuant to the PPEA and its implementing procedures, the City subsequently gave notice that it had decided to consider the Conceptual Proposal and invited any competing proposals submitted to it by a specified deadline for consideration in order to determine whether it should advance to the detail phase for proposals and be followed by entering into a Comprehensive Agreement pursuant to the PPEA with any offeror(s) for the finance, design, and construction of the Project. The City first published its Public Notice on April 29, 2007.

R-3. No other additional offerors submitted conceptual-phase proposals by the deadline required by the City.

R-4. The City subsequently selected the Foundation for negotiation of a comprehensive agreement under the PPEA for the contemplated project based upon the Foundation's conceptual-phase proposal and the City's evaluation of the Conceptual Proposal.

R-5. The parties have now negotiated a comprehensive agreement consistent with the PPEA, the City's implementing procedures, the Foundation's Conceptual Proposal, and the City's instructions, the terms and conditions of which are set out in this Agreement.

R-6. As required by Va. Code § 56-575.16(5), the City Council of the City of Richmond, Virginia has approved, and authorized the City to enter into, this Agreement by Ordinance No. 2007-235-201, adopted September 10, 2007.

**NOW THEREFORE**, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

**1. Incorporation of Recitals.**

The foregoing recitals are true and correct and are incorporated herein by reference. Pursuant to Va. Code § 56-575.9(D), the duties of a "private entity" under the PPEA are hereby incorporated into this Agreement and imposed upon the LLLP.

**2. Definitions.** The following definitions apply to this Agreement:

(a) "Carpenter Theatre" means the property described on Exhibit A of the Carpenter Deed attached to this Agreement as Exhibit C as well as all improvements on such property.

(b) "City Contribution" means the stipulated sums that the City will be obligated to pay to the LLLP in connection with the Project and in accordance with this Agreement.

(b1) "City Delay" means a delay in the Construction Work caused by (i) the failure of the City or its officers, employees, contractors, or other agents to perform the City's obligations under this Agreement or (ii) the City's failure to give or deny approvals or issue or deny permits within the time periods prescribed by the Code of the City of Richmond following the proper submittal of fully compliant drawings, plans, specifications or other materials to the City for review and approval in connection with the construction of the Project. However, a delay as described in the preceding sentence that is caused by a Force Majeure Event is deemed to not be a City Delay.

(b2) “Clerk’s Office” means the office of the Clerk of the Circuit Court of the City of Richmond, Virginia.

(c) “Construction Contract” means the contract or contracts, as applicable, for the Project, which consist of the Construction Management Agreement dated November 2, 2004, by and between the Foundation and Gilbane Building Company (the “Construction Manager”), together with all exhibits and conditions attached thereto, and any modifications to these documents. The Foundation shall assign its rights and interests under the Construction Contract to the LLLP pursuant to the terms of this Agreement.

(d) “Construction Work” means the pre-construction services, construction-related services and construction required by this Agreement to be provided by the LLLP for the Carpenter Theatre and the Dorothy Pauley Square, including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction, resulting in a complete and fully operational set of facilities.

(e) “Developer” means the LLLP, which is acting as the “private entity” under the PPEA and is also referred to as the “Developer” in the Construction Contract upon assignment of the Foundation’s rights and interests in the Construction Contract to the LLLP.

(f) “Dorothy Pauley Square” means the property located at the northwest corner of the intersection of 7<sup>th</sup> Street and Grace Street as well as all improvements on such property.

(h) “Effective Date” means the date upon which the last of the signatures of all parties to this Agreement is made.

(h1) “Force Majeure Event” means an event that causes a party to be unable to perform its obligations under this Agreement that is due to circumstances beyond such party’s reasonable control, such as a natural disaster, terrorist act, action or decree of a governmental body having jurisdiction (other than by the City acting in either its sovereign or contractual capacity), or any other events commonly known as “acts of God.”

(i) “Foundation Contribution” means the stipulated sums that the Foundation will be obligated to pay to the LLLP in connection with the Project and in accordance with this Agreement.

(j) “Landmark Theater” means the property described in Recital R-1 to this Agreement as well as all improvements on such property.

(k) "Northern Portion" means the northern half of the block located along the south line of Broad Street between 6<sup>th</sup> Street and 7<sup>th</sup> Street as well as all improvements on such property.

(l) "Project" has the meaning given to it in R-1 of the Recitals to this Agreement. "Project" includes the entirety of the Project or a part thereof.

(m) "Project Agreements" means those documents specifically identified as such in Section 38.1 hereof.

(n) "Project Team" means the project team identified in Section One of the Conceptual Proposal.

(n1) "RRHA" means the Richmond Redevelopment and Housing Authority.

(o) "Scope Documents" means the Conceptual Proposal.

(p) "Substantial Completion" means the Project (or a specific part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Project (or a specific part thereof) can be utilized for the purposes for which it is intended.

### **3. General Scope.**

(a) Pursuant to this Agreement, the LLLP will be providing site design and development services, design services, and construction to design and build the Project. In addition to other responsibilities and obligations set forth herein, the Foundation and the City will be providing financing for the construction of the Project in accordance with this Agreement. After completion of construction, the City, the Foundation and the LLLP will continue to work together to operate and maintain the Project pursuant to this Agreement and the other Project Agreements.

(b) The City has determined that the Project serves the public purpose of the PPEA because:

(1) There is a public need for and a benefit derived from this Project.

(2) This Agreement with the Foundation and the LLLP will result in the timely design, construction, improvement, renovation, expansion, equipping, installation, operation and maintenance of the Project.

(c) It is the intention of the LLLP to delegate some or all of its responsibilities regarding the construction-related aspects of the Project to the Building Committee of the LLLP's general partner, RPAC, Inc., a Virginia corporation ("RPAC"). To the extent the LLLP

agrees herein to obligations regarding construction or restoration activities, the parties hereto agree and acknowledge that such obligations may be fulfilled by RPAC and its Building Committee on behalf of the LLLP. Similarly, it is the intention of the LLLP to delegate some or all of its responsibilities regarding the management-related aspects of the Project to the Operations Committee of RPAC. To the extent the LLLP agrees herein to obligations regarding management activities, the parties hereto agree and acknowledge that such obligations may be fulfilled by RPAC and its Operations Committee on behalf of the LLLP. The Foundation and the LLLP shall be responsible for forming RPAC. The parties shall provide by an agreement in the form attached hereto as **Exhibit K** that the Board of Directors of RPAC shall be selected exclusively from persons approved by the Mayor of the City. The City and the Foundation shall be entitled to enforce any performance required of the LLLP by this Agreement against the LLLP notwithstanding any delegation of responsibilities by the LLLP pursuant to this Agreement.

(d) This Agreement is made among the City, the Foundation and the LLLP; however, the success of the Project and its financing relies on the involvement of others not party to this Agreement, including but not limited to tax credit investors and their related entities.

(e) The parties hereto acknowledge that the Foundation has executed various contracts with third parties with respect to the Project and will, in connection with this Agreement and on a timeline appropriate for completion of construction of the Project, assign its rights, title and interest in and to such contracts to the LLLP, which shall accept such assignment and assume all obligations of the Foundation thereunder. The City consents to such assignments provided the City's rights and responsibilities under this Agreement are not affected thereby.

#### **4. Conveyance and Leases.**

(a) Conveyance of Carpenter Theatre. The Foundation shall convey the Carpenter Theatre, free and clear of any liens and monetary encumbrances, to the City by special warranty deed in materially the same form as provided in **Exhibit C**, attached hereto as a part hereof (the "Carpenter Deed"). The Foundation and City hereby agree to grant reciprocal easements reasonably necessary for the construction and operation of the Project and for the development and use of the Carpenter Theatre, Dorothy Pauley Square and the Northern Portion upon the request of the other. The stated consideration in the Carpenter Deed for such conveyance shall be Ten Dollars (\$10.00), and the Foundation shall be responsible for any taxes

or fees associated with the recordation of the Carpenter Deed. The Foundation shall be responsible for any ad valorem or other real estate taxes or assessments owed upon the Carpenter Theatre before the earlier of the date upon which the executed Carpenter Deed is delivered to the City or the date upon which the executed Carpenter Deed is recorded in the Clerk's Office. The Foundation shall be obligated, at its sole cost and expense, to satisfy at or prior to the closing all monetary encumbrances affecting the Carpenter Theatre as evidenced by deeds of trust, tax liens, judgments, mechanics' liens, or other liens or charges in a fixed sum. All risk of loss or damage to the Carpenter Theatre by fire or other casualty shall remain with the Foundation until such conveyance. The Foundation represents and warrants to the City that there have been no and are no hazardous materials or substances, as defined by any federal, state or local governmental body having jurisdiction over the Carpenter Theatre, used, stored in or on, kept in or on, or disposed upon or otherwise affecting (or which may have affected) the Carpenter Theatre or any portion thereof, for which the Foundation is not performing the appropriate remedy required by such federal, state or local governmental bodies. In the event of a breach of the foregoing representation and warranty, the Foundation shall indemnify, defend and hold the City harmless from any and all resulting loss, cost, damage or expense, including reasonable attorneys' fees and court costs.

(b) Lease of Carpenter Theatre to the LLLP. Simultaneously with the execution and delivery of the Carpenter Deed, the City, as landlord, and the LLLP, as tenant, shall enter into a Lease Agreement for the Carpenter Theatre in a form substantively similar to the Lease Agreement attached hereto as **Exhibit D** and by this reference made a part hereof (the "City Lease"). The term of the City Lease shall be forty (40) years and the annual rent owed to the City by the LLLP under the City Lease shall be One Dollar (\$1.00). The parties recognize that Va. Const. art. VII, § 9 and Title 15.2, Chapter 21, Article 1 of the Code of Virginia require the completion of the franchising process set forth in Title 15.2, Chapter 21, Article 1 of the Code of Virginia before the City can grant a lease with a term longer than five years. Accordingly, the City will grant the LLLP a right of entry to enable the LLLP to enter onto the Carpenter Theatre property during the franchising process. The term of the right of entry will commence on the date the City records the Carpenter Deed and will expire on the date a lease is granted pursuant to the aforementioned franchising process.

(c) Lease of Dorothy Pauley Square. Subject to the simultaneous execution and delivery of the City Lease, the Foundation, as landlord, and the LLLP, as tenant, shall enter into a Lease Agreement for the Dorothy Pauley Square in a form substantively similar to the Lease Agreement attached hereto as **Exhibit E** and by this reference made a part hereof (the "Foundation Lease"). The term of the Foundation Lease shall be forty (40) years and the annual rent owed to the Foundation by the LLLP under the Foundation Lease shall be One Dollar (\$1.00). In the event the Project suffers from financial difficulties (including, but not limited to, an uncured monetary default by the Foundation, LLLP, or RPAC under the Construction Contract) and the Foundation, LLLP or RPAC requests financial relief from the City beyond the contribution the City has agreed to pay herein, the Foundation, the LLLP and RPAC hereby agree to transfer their respective interests in the Dorothy Pauley Square in exchange for any additional monies received from the City to complete the construction of the Project.

(d) Northern Portion. The Foundation agrees that during the Construction Work, the Northern Portion shall serve, as needed, as a site for construction assembly, storage and support in connection with the Construction Work. Following the completion of the Construction Work, the Foundation shall seed the Northern Portion and leave it as an open space that can be improved for use as a park or an outdoor performance space, and its exact use thereafter shall be determined by the Foundation with the City's approval, which shall not be unreasonably withheld. If, within five (5) years of the date on which a certificate of occupancy is issued for the Carpenter Theatre or Dorothy Pauley Square facilities (whichever certificate of occupancy is issued first), no such use of the Northern Portion has been determined by the City and the Foundation, the City may require the Foundation to sell the Northern Portion at its fair market value and contribute the proceeds of such sale to the Foundation's endowment providing support for the Project. The City agrees to use its best efforts to cause RRHA to execute and deliver to the Foundation a document recordable in the Clerk's Office materially in the same form as **Exhibit F**, attached hereto as a part hereof, evidencing RRHA's release and quitclaim and the termination of any and all of its right(s) of reversion in and to the Dorothy Pauley Square and the Northern Portion. The Foundation may elect to have such document recorded in the Clerk's Office at its own expense. The City agrees to use its best efforts to prevent the exercise of any such right(s) of reversion by RRHA beginning on and following the Effective Date of this Agreement.

(e) Other Recordable Documents. Each party may request that the other party execute a memorandum of lease prepared by the requesting party subject to the other party's review and approval. The requesting party shall pay any and all fees and taxes arising from the recordation of such a memorandum in the Clerk's Office.

**5. Comprehensive Project Schedule.**

The comprehensive project schedule with respect to the construction and improvements of the Carpenter Theatre and Dorothy Pauley Square, which includes the site design and development tasks, the design services, and the construction services, is attached to the Conceptual Proposal as Exhibit L. In the event any changes are made to this schedule, the LLLP shall promptly deliver a copy of the revised schedule to the City and the Foundation.

**6. Site Design and Development.**

The Foundation has approved and, after the Effective Date, the LLLP and its Project Team will provide or have provided the site design, management and development services to the City and the Foundation described on Exhibit L. With respect to the construction-related aspects of the Project, no material deletion of any scope, programs or amenities that are reflected in the Conceptual Proposal shall be effective unless such deletion is specifically brought to the City's attention in writing and the City specifically agrees in writing to such deletion.

**7. Compliance with Laws; City Review of Plans and Specifications.**

(a) The LLLP shall comply with all laws, rules, regulations and lawful orders of any public authority bearing on the performance of the Construction Work and the continuing operation of the Project.

(b) The LLLP shall submit drawings, plans, schedules, specifications and other documents relating to the Project to the City as required in accordance with the requirements of the City's code of ordinances. See City Code § 74-408(b)(2) & Va. Code § 56-575.9(A)(2). Although the LLLP and the Foundation acknowledge that City permits, approvals and related signatures are dependent upon the compliance of the applications and other documentation submitted to the City with applicable code requirements, the City will use its best efforts to assist the LLLP by expediting the review process for such approvals and provide City



signatures when permitting or approval applications and other documentation meet the applicable code requirements.

**8. Construction Services.**

(a) Construction services to be provided by the LLLP and the Project Team for the Project shall be performed pursuant to the Construction Contract, as modified by the parties thereto.

(b) The LLLP shall use its commercially reasonable and diligent efforts to achieve final completion of the Project in accordance with the Project Schedule.

(c) The City, through its officers, employees or other agents, shall have the right to enter onto the site of the Project at any time upon reasonable prior notice for the purpose of inspecting the progress of the Construction Work to ensure that the LLLP's activities and those of the Project Team are acceptable to the City in accordance with the provisions of this Agreement; however, such inspections shall be subject to such supervision and guidance by the LLLP and the Project Team as necessary to ensure that such inspections do not interfere with the Construction Work itself. *See* City Code § 74-408(b)(3) & Va. Code § 56-575.9(A)(3).

**9. Plan of Finance.**

(a) ***City Contribution--Construction.***

(1) *Financing.* The City intends to finance its share of costs of the construction of the Project in a manner acceptable to the City in its sole discretion that results in the availability of funds pursuant to the contributions required in accordance with a mutually agreeable Schedule of Payments (the "Schedule of Payments"). The Foundation and the LLLP acknowledge their understanding and agreement that the City intends to issue tax-exempt bonds and notes to finance the City Contribution to the Project. The LLLP, at its cost, shall furnish the City with a legal opinion from a qualified tax counsel acceptable to the City that its proposed legal structure, as such structure is actually established, will allow the City to issue its tax exempt bonds and notes to finance the City Contribution. Such opinion shall be subject to examination by the City's own bond and tax counsel retained by the City and at the City's cost.

(2) *Amount of City Contribution.* The City represents that the City Council of the City has (i) adopted a Capital Improvement Plan in accordance with section 6.19 of the Charter of the City of Richmond that includes a total amount of \$25,000,000.00 for the Carpenter Theatre project over the next five years as part of the City of the Future Program, (ii)

appropriated \$11,500,000 to this project for the City's Fiscal Year 2007-2008 and (iii) appropriated \$2,300,000 to this project in prior fiscal years. The Foundation and the LLLP acknowledge their understanding and agreement that the remaining \$8,700,000, although set forth in the City's five-year Capital Improvement Plan, has not been appropriated and will not be available until future fiscal years. It is the intent of the City that funds appropriated for the completion of the Carpenter Theatre portion of the Project shall be paid in accordance with this Agreement. Notwithstanding any other provision of the Project Agreements to the contrary, under no circumstances shall the total cumulative amount of the City Contribution exceed \$25,000,000.00, irrespective of the final costs of the Project.

(3) *Subject-to-Appropriations.* All payments and other performance by the City under this Agreement are subject to annual appropriations by the City Council. It is understood and agreed between the parties herein that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the City's payments under and performance of this Agreement.

(b) ***Foundation Contribution--Construction.***

(1) *Financing.* The Foundation intends to finance its share of costs of the construction of the Project in a manner acceptable to the Foundation in its sole discretion that results in the availability of funds pursuant to the contributions required in accordance with the Schedule of Payments. The City recognizes and acknowledges that the financing of the Project by the Foundation and the LLLP depends in substantial part on the availability, earning, acquisition, sale and syndication of certain federal and state historic tax credits, new market credits, and other tax credits (the "Tax Credits") related to the rehabilitation, restoration and expansion of Carpenter Theatre and the construction of a building at Dorothy Pauley Square. The City agrees to cooperate with the Foundation and the LLLP to permit reasonable changes to the Project Agreements, including this Agreement and any exhibits hereto, in order to allow and facilitate the acquisition, earning, sale and syndication of such Tax Credits. The City and the Foundation also agree to sign documentation, subject to approval of the form and substance of such documentation by the signing party, in connection with the acquisition, earning, sale and

syndication of such Tax Credits, and to accommodate other reasonable requests of the LLLP provided such does not materially affect the City's rights hereunder.

(2) *Amount of Foundation Contribution.* The Foundation represents that its revenues and available funds are greater than or equal to the amounts set forth in Section 3(b) of the Conceptual Proposal. It is the intent of the Foundation that these revenues and available funds for the completion of the Project shall be paid in accordance with this Agreement.

**10. Delays/Force Majeure.**

In the event of a City Delay or Force Majeure Event the LLLP shall (i) furnish the City and the Foundation with written notice of a City Delay or Force Majeure Event upon learning that a City Delay or Force Majeure Event will occur or has occurred and is ongoing and (ii) seek to minimize the period of delay or hindrance by any means possible, including, without limitation, seeking alternate sources of labor or materials or causing acceleration of the Construction Work.

**11. Records.**

(a) *Records of the LLLP.*

(1) *Maintenance of records.* The LLLP shall maintain all records legally required or customarily maintained by similar business organizations performing similar roles in a project similar to the Project. Such records shall include but by no means be limited to accounting records, written policies and procedures, change order files, documentation covering negotiated settlements, and records necessary to evaluate and verify direct and indirect costs (including overhead allocations).

(2) *Inspection of Records.* The agents or other authorized representatives of the City and the Foundation shall have the right to audit, examine, inspect and reproduce all records maintained by the LLLP during normal working hours with reasonable prior notice.

(3) *Access to Records.* For the purpose of such audits, examinations, and inspections, the City's and Foundation's agents or authorized representatives shall have access to all of the LLLP's records from the effective date of this Agreement, for the duration of the Agreement, and until one (1) year after the termination of this Agreement. The City's and Foundation's agents or its authorized representatives shall have access to the LLLP's facilities and shall be provided adequate and appropriate work space in order to conduct such audits, examinations and inspections.

(b) ***Construction Records.*** The LLLP shall maintain in good order four record copies of the plans, change orders and any other related documents, marked currently to record changes made during construction, two copies for the City, one copy for the Foundation and one copy for the LLLP. During construction, the City and the Foundation shall have the right to review all plans, change orders and other related documents during regular business hours. For the purpose of aiding the City and the Foundation in assuring compliance with this Agreement, the LLLP will provide a Schedule of Value line item for "Record Documents." Upon completion of the design and construction of the Project, the LLLP shall deliver to the City and the Foundation (i) as-built drawings for the Project (in both electronic and paper format), (ii) all written specifications as amended, (iii) complete copies of all operations and maintenance manuals for all equipment installed in the facility, and (iv) all warranties required pursuant to this Agreement and all warranties required by the Construction Contract.

(c) ***Public Disclosure.***

(1) ***Applicable Law.*** All parties to this Agreement acknowledge that records maintained by or in the custody of the City are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76—42.1-90.1, the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700—2.2-3714 and City Code § 74-402(g)(1) and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

(2) ***Proprietary Information.*** Pursuant to Va. Code § 56-575.17(D), the City shall make procurement records available for public inspection, upon request; however, procurement records shall not be interpreted to include (i) trade secrets of a private entity as defined in the Uniform Trade Secrets Act, Va. Code §§ 59.1-336—59.1-343 or (ii) financial records, including balance sheets or financial statements of a private entity that are not generally available to the public through regulatory disclosure or otherwise. The City will not disclose records described in Va. Code § 2.2-3705.6(11)(b) provided that the requirements of that statute have been fully complied with. For purposes of this subdivision, the term "private entity" means either the Foundation or the LLLP.

(3) ***Challenges to Nondisclosure.*** If a party submitting records to the City requests that those records not be disclosed under applicable law, the City consequently denies a request for the disclosure of such records based on the submitting party's request, and the City's denial of a request for disclosure of records is challenged in court, the submitting party shall

indemnify, hold harmless and defend the City, its officers and its employees from any and all costs, damages, fees and penalties (including any attorneys' fees and other costs related to the litigation) relating thereto.

**12. Warranties.**

All warranties given by or to the LLLP or the Foundation under this Agreement and under the Construction Contract shall be assigned to, or remain with, the LLLP. All warranties regarding the Carpenter Theatre given by or to the LLLP or the Foundation under this Agreement or the Construction Contract shall be assigned to the City upon the expiration or earlier termination of the City Lease.

**13. Payments.**

(a) *Payments by the City.* Pursuant to City Code § 74-408(c), all constitutional and statutory requirements applicable to the appropriation and expenditure of public funds apply to the City's obligations in this Agreement, and the processes and procedural requirements associated with the expenditure or obligation of public funds are incorporated into this Agreement. All payments by the City under this Agreement are subject to annual appropriations as provided in Section 9(A)(3) of this Agreement. Pursuant to this Agreement, the City shall make payments of the City Contribution to the LLLP in accordance with the Schedule of Payments and the requirements for committing and utilizing City of the Future Program funds pursuant to the Intracity Correspondence dated April 19, 2007, updated May 16, 2007, from John F. Winter II and the Project Authorization Form, Project Invoice Payment Certification, and Project Inspection Form attached thereto (the "Payment Requirements"). Notwithstanding any provision of this Agreement to the contrary, the LLLP shall only request payments by the City for actual hard and soft construction costs incurred and verified for which an invoice has been received and must be paid, and funds provided by the City pursuant to this Agreement shall under no circumstances be held or "banked" by the LLLP for future payments.

(b) *Payments by the Foundation.* In connection with this Agreement, the Foundation shall make payments of the Foundation Contribution to the LLLP in accordance with the Schedule of Payments and those portions of the Payment Requirements applicable to payments from the Foundation in the Foundation's sole discretion. The projections of the Foundation Contribution in the Schedule of Payments are tentative and subject to modification.

The LLLP shall notify the Foundation of changes in these projections in sufficient time so that the Foundation can make timely payments of the Foundation Contribution.

(c) ***Application of Contribution Payments.*** Payments to the LLLP shall be applied by the LLLP to unpaid design, development, construction and other related costs in accordance with the Construction Contract and other third-party contracts necessary for the completion of the Project pursuant to this Agreement and the Project Agreements. Payments by the City of funds financed through debt issuances as described in Section 9(a) above shall be applied only to those costs associated with the Construction Work directly related to the Carpenter Theatre.

(d) Unexpended funds contributed by the Foundation, if any, shall accrue, at the Foundation's option, to the LLLP or the Foundation or to reserves for the Project and shall not be paid to the City.

**14. Reserved.**

**15. Management Agreements.**

(a) ***Carpenter Theatre and Dorothy Pauley Square.*** Prior to the date on which a certificate of occupancy is issued for the Carpenter Theatre or Dorothy Pauley Square (whichever certificate of occupancy is issued first), but in no event later than August 1, 2009, the LLLP and RPAC shall enter into a management agreement under which RPAC shall manage the operations, maintenance and repair of the Carpenter Theatre and Dorothy Pauley Square (the "LLL Management Agreement"). The LLL Management Agreement must be approved by the City Attorney on behalf of the City prior to its execution. The LLL Management Agreement shall include, but not be limited to, the following terms and conditions:

(1) The term of the LLL Management Agreement shall begin as of the date of such agreement and shall end upon the expiration or earlier termination of the City Lease and the Foundation Lease.

(2) RPAC shall be responsible for all aspects of managing the facilities, including, but not limited to, scheduling use of the facilities, renting the facilities, entering service contracts, conducting routine maintenance and repairs, ticketing, marketing, hiring/firing staff, payroll processing, and approving finances and operating budgets. The Foundation intends to pay for capital repairs and improvements to Dorothy Pauley Square.

(3) The LLLP shall maintain property insurance on the Carpenter Theatre and Dorothy Pauley Square in accordance with the City Lease and the Foundation Lease, and RPAC shall maintain commercial general liability insurance and other insurance in forms, coverages and amounts that comply with all requirements of subsections (a) and (b) of Section 16 of this Agreement. RPAC's insurance coverage shall be primary as to the LLLP's insurance coverage, and, as provided in Section 16, the LLLP's insurance coverage shall be primary as to the City's and the Foundation's insurance coverage. See City Code § 74-408(b)(4) & Va. Code § 56-575.9(A)(4).

(4) The City, through its officers, employees or other agents, shall have the right to enter onto the property of the Carpenter Theatre at any time upon reasonable prior notice for the purpose of monitoring the practices of the LLLP and RPAC to ensure that the Carpenter Theatre is properly operated and maintained in accordance with the provisions of this Agreement. See City Code § 74-408(b)(5) & Va. Code § 56-575.9(A)(5).

(5) The City and the Foundation shall be considered third-party beneficiaries of the LLLP Management Agreement.

(6) Pursuant to City Code § 74-408(b)(9)(a) and Va. Code § 56-575.9(B), a copy of (i) the LLLP Management Agreement, (ii) any amendment, modification or supplement thereto, and (iii) any service contract entered into by RPAC in the performance of its duties under the LLLP Management Agreement shall be filed with the City within five working days after the execution thereof.

(b) **Landmark Theater.** The parties hereto acknowledge that the City owns the Landmark Theater and intends to finance, at its own expense and in an amount of up to but not greater than \$5,000,000, a renovation of the Landmark Theater. Prior to or upon completion of such renovation, but in no event later than August 1, 2009, the City and RPAC shall enter into a management agreement under which RPAC shall manage the operations, maintenance and repairs of the Landmark Theater (the "City Management Agreement"). The City Management Agreement must be approved by the City Attorney on behalf of the City prior to its execution. The City Management Agreement shall include, but not be limited to, the following terms and conditions:

(1) The initial term of the City Management Agreement shall be five (5) years, subject to approval of City Council, with unlimited one-year renewals at the City's option

(2) RPAC shall be responsible for all aspects of managing the facilities, including, but not limited to, scheduling use of the facilities, renting the facilities, entering service contracts, conducting routine maintenance and repairs, ticketing, marketing, hiring/firing staff, payroll processing, and approving finances and operating budgets.

(3) The costs of any capital maintenance, repairs, or improvements shall be paid by the City.

(4) RPAC agrees to substitute itself for the City in all service contracts maintained by the City for the use of the Landmark Theater that are terminable with thirty (30) days' notice and that such substitution shall be by novation and RPAC shall assume any ongoing service contracts maintained by the City solely for the use of the Landmark Theater that are terminable with thirty (30) days' notice, and shall, in its reasonable discretion, offer employment to current staff members of the Landmark Theater. RPAC shall have the option to assume any ongoing service contracts maintained by the City solely for the use of the Landmark Theater that are not terminable with thirty (30) days' notice. Any assignment of service contracts made pursuant to this subparagraph (4) shall include a provision whereby the City agrees to be liable for any payments and performance under such service contract up to the date of such assignment and RPAC shall be liable for any payments and performance under such service contract from and after the date of such assignment.

(5) The City shall maintain property insurance on the Landmark Theater, and RPAC shall maintain insurance in forms, coverages and amounts that comply with the City's standard insurance requirements for City contractors. RPAC's insurance coverage shall be primary as to the City's insurance coverage.

(6) The City, through its officers, employees or other agents, shall have the right to enter onto the property of the Landmark Theater at any time after reasonable prior notice for the purpose of monitoring the practices of RPAC to ensure that the Landmark Theater is properly operated and maintained in accordance with the provisions of this Agreement and the City Management Agreement.



(7) The City must approve every service contract entered into by RPAC prior to its execution. Any service contract entered into by RPAC in the performance of its duties under the LLLP Management Agreement shall be filed with the City within five working days after the execution thereof.

(c) ***Use Policies.*** Both the LLLP Management Agreement and the City Management Agreement (collectively, the “Management Agreements”) shall provide that RPAC will establish policies for the use of the facilities at the Carpenter Theatre, Dorothy Pauley Square and the Landmark Theater in light of traditional priorities for use by local entities. Further, the Management Agreements shall require RPAC to establish a “User Advisory Group” comprised of key users of the Landmark Theater (e.g., the Richmond Forum and the Department of Parks, Recreation and Community Facilities) and the Carpenter Theatre (e.g., the Richmond Symphony, the Virginia Opera, and the Richmond Ballet), and users of any planned multi-purpose and community playhouse spaces within the Project (e.g., representatives from the Alliance for the Performing Arts), to provide input and guidance on the policies governing the use of the Carpenter Theatre, Dorothy Pauley Square and the Landmark Theater. All policies for the use of the Carpenter Theatre and the Landmark Theater must be approved by the City in writing prior to their implementation, and all policies for the use of the Dorothy Pauley Square must be approved by the Foundation in writing before implementation.

(d) ***License Agreements.*** The Management Agreements shall provide that use of the Carpenter Theatre, Dorothy Pauley Square and the Landmark Theater shall be by license agreement or similar agreement executed by RPAC as the manager of the facilities only. The Management Agreements shall require that the form of the license agreement or similar agreement employed by RPAC to allow the use of the Carpenter Theatre and the Landmark Theater must first be approved by the City Attorney.

(e) ***User Fees and Other Payments.***

(1) ***City Facilities.*** Pursuant to City Code § 74-408(b)(9) and Va. Code § 56-575.9(B), the City and the LLLP may from time to time agree to establish, adjust, eliminate or waive user fees or other payments for the use of the Carpenter Theatre and the Landmark Theatre.

(2) *Foundation Facilities.* The Foundation and the LLLP may from time to time agree to establish, adjust or eliminate user fees, lease payments or service payments for the use of the Dorothy Pauley Square.

(3) *General Requirements.* Any payments or fees shall be set at a level that is the same for persons using such facilities under like conditions and that will not materially discourage use of those facilities. Classifications according to reasonable categories for assessment of user fees may be made. A schedule of the current user fees or lease payments shall be made available by the LLLP (whether or not through RPAC) to any member of the public upon request. *See* City Code § 74-408(b)(9).

**15.1 Operating Contributions by City and Foundation.** During the period that RPAC operates the Carpenter Theatre, the Dorothy Pauley Square and the Landmark Theater pursuant to the Management Agreements, the City intends to contribute an annual amount of up to \$500,000 to the LLLP to be applied to the operations of the Carpenter Theatre, the Dorothy Pauley Square and the Landmark Theater, provided that (i) each dollar of City funds provided pursuant to this section must be matched dollar-for-dollar by the Foundation, (ii) all funds provided by the City pursuant to this section shall be subject to annual appropriations as provided in Section 9(A)(3) of this Agreement and (iii) any excess of such funds shall be added to the operating reserves of LLLP.

**16. Insurance.**

(a) *General Provisions.* The LLLP shall provide and maintain throughout the life of this Agreement insurance in the kinds and amounts specified in this section with an insurer licensed to transact insurance business in the Commonwealth of Virginia. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers and shall be countersigned by duly authorized local agents of such insurers.

(1) *Costs and Premiums.* The LLLP shall pay all premiums and other costs of such insurance. The City Contribution paid or to be paid under this Agreement includes the premiums and other costs of such insurance, and the City shall not be responsible therefor.

(2) *Policy Requirements.* All insurance contracts and policies shall provide, or be endorsed to provide, as follows:

a. Subrogation against the City and the Foundation shall be waived.

b. Coverage will not be canceled, non-renewed or materially modified in a way adverse to the City or the Foundation without 45 days' written notice to the City and the Foundation.

c. The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies.

d. All coverages required to be maintained by the LLLP, whether on its own or through its Construction Manager or other appropriate contractors, shall be primary as respects any insurance of a similar nature or coverage maintained by the City or the Foundation.

No insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia.

(3) *Evidence to Be Furnished.* All certificates of insurance and other evidence of insurance required to be furnished by this Section 16 shall be provided to the City before the parties execute this Agreement and thereafter on an annual basis.

a. Endorsements. The LLLP shall furnish the City with a copy of the policy endorsement naming the City and its officers, employees, agents and volunteers as an additional insured for each policy for which such endorsement is required under this Section 16. The LLLP shall furnish the Foundation with a copy of the policy endorsement naming the Foundation and its officers, employees, agents and volunteers as an additional insured for each policy for which such endorsement is required under this Section 16. The LLLP shall furnish the City and the Foundation with copies of such other endorsements as may be required under this Agreement upon request therefor.

b. Certificates of Insurance. The LLLP shall furnish the City and the Foundation each with a certificate of insurance evidencing the required coverages, indicating that the City, the Foundation and their officers, employees, agents and volunteers are listed as additional insured and that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the City or the Foundation without 45 days' written notice to the City and the Foundation.

c. Contracts and Policies. The LLLP is not required to furnish the City with copies of insurance contracts or policies required by this Section 16 unless requested at any time by the City or the Foundation.

(b) ***Schedule of Coverage.*** The LLLP shall provide and maintain throughout the life of this Agreement the following types of insurance in accordance with the requirements of this Section 16:

(1) Commercial General Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence (on an occurrence basis and not a claims made basis) listing the City, the Foundation and their officers, employees, agents and volunteers as additional insured.

(2) Automobile Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence listing the City, the Foundation and their officers, employees, agents and volunteers as additional insured.

(3) Statutory Workers' Compensation and Employers' Liability Insurance with the Alternate Employer Endorsement WC 000301.

(4) Umbrella or Excess Liability Insurance for liabilities in excess of the limits described in subdivisions (1), (2) and (3) of this subsection in an amount not less than \$10,000,000 listing the City, the Foundation and their officers, employees, agents and volunteers as additional insured.

(5) Director and Officer Liability Insurance in an amount not less than \$10,000,000 covering the LLLP and RPAC.

(c) ***Additional Insurance for Construction Work.*** In addition to the coverages set forth in subsection (b) of this section, the LLLP, either on its own or through the Construction Manager or other appropriate contractors, shall provide and maintain at all times during the performance of the Construction Work the following types of insurance in accordance with the requirements of this Section 16:

(1) Professional Liability (i.e., Errors and Omissions) Insurance with limits of not less than \$1,000,000 per occurrence for all design professional work performed in relation to the Construction Work.

(2) Builder's Risk Insurance in the all-risk form covering damage to or loss of all property and structures in an amount equal to 100% of the insurable value thereof on

which the Construction Work is performed caused by fire, explosion, wind, lightning, vandalism, malicious mischief and any similar other casualty, risk or peril. This insurance shall be payable to the City, the Foundation, the LLLP and its Construction Manager as their respective interests may appear. The insurance contract shall provide that the City shall serve as attorney-in-fact for all builder's risk insurance proceeds.

(3) Should any blasting become necessary to perform the Agreement, liability insurance shall be provided by the LLLP or its Construction Manager in the amount of at least \$1,000,000 per occurrence, directly or indirectly arising from or during the time blasting is done. Such insurance may be provided either under a separate blasting insurance contract, by endorsement of the Commercial General Liability Insurance contract, or by any other insurance contract. Such insurance shall cover the LLLP and its Construction Manager and shall extend to provide coverage of any Subcontractor doing blasting. No blasting shall be done until the insurance covering blasting is provided as required by this subsection.

The LLLP represents that the Construction Manager has agreed to provide specific insurance coverage more particularly described in Appendix E to the Construction Contract.

(d) ***Additional Insurance Requirements.*** The City and the Foundation reserve the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, provided the party requiring such revisions compensates the LLLP for any additional costs incurred to obtain insurance criteria different from that specified herein.

#### **16.1 Contract Security.**

(a) ***Performance and Payment Bonds.*** In accordance with City Code § 74-408(b)(1) (and Va. Code § 56-575.9(A)(1)), the LLLP shall deliver to the City a Performance Bond and a Labor and Material Payment Bond. Each bond shall be (i) in the form for such bond prescribed by the City for City construction contracts, (ii) fully executed by the LLLP and one or more surety companies legally licensed to transact fidelity and surety business in Virginia and (iii) in the penal amount of \$25,000,000.00. If more than one surety executes a bond, each shall be jointly and severally liable to the City for the entire amount of the bond. The LLLP shall select the sureties, subject to approval by the City. No payment by the City pursuant to this

Agreement shall be due and payable until the bonds have been approved by the Office of the City Attorney.

(b) ***Alternative Forms of Security.*** The LLLP may submit alternative forms of security in lieu of the bonds described in subsection (a) above in accordance with City Code § 74-70 (Va. Code § 2.2-4338). No payment by the City pursuant to this Agreement shall be due and payable until any such alternative forms of security have been approved by the Office of the City Attorney.

**17. City's Representations and Warranties.**

The City hereby represents and warrants to the Foundation and the LLLP as follows:

(a) The City is a municipal corporation and political subdivision of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.

(b) Each person executing this Agreement on behalf of the City is duly authorized to execute this Agreement on behalf of the City.

(c) Neither the execution and delivery by the City of this Agreement and any other documents executed concurrently herewith to which the City is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on the City which challenges the City's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which the City is a party, or which challenges the authority of the City official executing this Agreement or the other related documents, and the City has disclosed to the parties hereto any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the City is aware.

(e) The representations and warranties of the City contained herein shall survive expiration or termination of this Agreement.

**18. Foundation's Representations and Warranties.**

The Foundation hereby represents and warrants to the City and the LLLP as follows:

(a) The Foundation is a duly organized and validly existing nonstock corporation created under the laws of the Commonwealth of Virginia, has the requisite power and has or will obtain all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other related documents to which the Foundation is a party and to perform each and all of the obligations of the Foundation provided for herein and therein.

(b) The Foundation has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other related documents to which the Foundation is a party.

(c) Each person executing this Agreement or any other related document on behalf of the Foundation has been or will at such time be duly authorized to execute each such document on behalf of the Foundation.

(d) Neither the execution and delivery by the Foundation of this Agreement and the other related documents to which the Foundation is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Foundation or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on the Foundation which challenges the Foundation's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which the Foundation is a party, or which challenges the authority of the Foundation official executing this Agreement or the other related documents; and the Foundation has disclosed to the other parties hereto any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Foundation is aware.

(f) The Foundation is and will remain in compliance with all laws, rules, regulations and lawful orders of any public authority applicable to it or its activities in connection with this Agreement and the other related documents.

(g) The Foundation certifies that all representations, information and data provided in support of, or in connection with, the proposal for the Project are true and correct.

(h) The representations and warranties of the Foundation contained herein shall survive expiration or termination of this Agreement.

**19. LLLP's Representations and Warranties.**

The LLLP hereby represents and warrants to the City and the Foundation as follows:

(a) The LLLP is a duly organized and validly existing entity created under the laws of the State of Virginia, has the requisite power and has or will obtain all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other related documents to which the LLLP is a party and to perform each and all of the obligations of the LLLP provided for herein and therein.

(b) The LLLP has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other related documents to which the LLLP is a party.

(c) Each person executing this Agreement or any other related document on behalf of the LLLP has been or will at such time be duly authorized to execute each such document on behalf of the LLLP.

(d) Neither the execution and delivery by the LLLP of this Agreement and the other related documents to which the LLLP is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the LLLP or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on the LLLP which challenges the LLLP's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which the LLLP is a party, or which challenges the authority of the LLLP official executing this Agreement or the other related documents; and the LLLP has disclosed to the other parties hereto any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the LLLP is aware.

(f) The LLLP is and will remain in compliance with all laws, rules, regulations and lawful orders of any public authority applicable to it or its activities in connection with this Agreement and the other related documents.



(g) The LLLP certifies that all representations, information and data provided in support of, or in connection with, the proposal for the Project are true and correct.

(h) The representations and warranties of the LLLP contained herein shall survive expiration or termination of this Agreement.

**20. Reporting Requirements.**

(a) ***Progress Reports.*** Until the Construction Work is completed, the LLLP shall submit to the City and the Foundation monthly progress reports on the progress of the Construction Work.

(b) ***MBE Participation Reports.*** The Project Team's plan for participation by minority business enterprises is described conceptually in Section 4(d), pages 35-36, of the Conceptual Proposal. The LLLP shall submit quarterly reports describing, in measurable terms, the progress made by the Project Team in achieving the goals set forth in its plan for participation by minority business enterprises and showing how the methods set forth in its plan for participation by minority business enterprises contribute to achieving those goals. In addition, the LLLP shall submit monthly reports detailing expenditures with minority business enterprises, showing at a minimum (i) the name of the business, (ii) an itemization of what the business provided (iii) the amount paid for each item, (iv) the total amount of spending with minority business enterprises and (v) the percentage of total spending for the month that was spent with minority business enterprises. For purposes of this section, the term "minority business enterprise" has the meaning ascribed to it by City Code § 74-4.

(c) ***Financial Statements.*** On a periodic basis as requested by the City, but under no circumstances less frequently than once per year, the LLLP and the Foundation shall each furnish the City with current and complete financial statements in such form and of such type as the City may reasonably request. See City Code § 74-408(b)(7) & Va. Code § 56-575.9(A)(7). Pursuant to Va. Code § 56-575.17(D) and Section 11(c)(2) of this Agreement, financial statements submitted as required by this subsection will not be subject to public disclosure.

**21. Termination of Agreement.**

(a) ***Termination by City.***

(1) *Default.* For purposes of this subsection (a), the term “material default” has the meaning ascribed to that term by Va. Code § 56-575.1.

(2) *Notice.* Upon a material default of this Agreement by the Foundation or the LLLP or both (any of which is referred to in this subsection (a) as the “Defaulting Party”) unless caused by a Force Majeure Event or City Delay, the City may terminate this Agreement with cause by delivery of written notice setting forth the nature of such material default to both the Foundation and the LLLP of the City’s intent to so terminate. Such notice shall be delivered 45 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Agreement for the delivery of notices.

(3) *Cure.* If the Defaulting Party cures the material default to the City’s satisfaction, indicated in writing to the Foundation and the LLLP, during this 45-calendar-day period, then the City’s notice of termination with cause shall be deemed null and void.

(4) *Effect.* Upon such termination, the City shall have with regard to the Project any and all rights and responsibilities afforded to a responsible public entity with regard to a qualifying project set forth in Va. Code § 56-575.11. In addition, the LLLP shall promptly provide the City all drawings, plans, specifications or other materials relevant to the Construction Work that have been done to date, regardless of whether they are complete.

(b) ***Termination by Foundation.***

(1) *Notice.* The Foundation may terminate this Agreement if the City Council does not appropriate sufficient funds for the City to perform its obligations under this Agreement or if the City otherwise does not make payments as required by this Agreement by delivery of written notice to the City of the Foundation’s intent to so terminate. Such notice shall be delivered at least 45 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Agreement for the delivery of notices.

(2) *Cure.* If the City cures the non-appropriation of funds by appropriating sufficient funds or cures its failure to make payments as required by this Agreement during this 45-calendar-day period, then the notice of termination issued by the Foundation or both shall be deemed null and void.

(3) *Effect.* Upon such termination, neither the Foundation nor the LLLP shall have any further obligations under this Agreement.

22. **Indemnification.** The LLLP shall indemnify, defend and hold harmless the City, the Foundation and their officers, employees, agents and volunteers from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach by the LLLP of its obligations specified in this Agreement, as well as all claims arising from errors, omissions, negligent acts or intentional acts of the LLLP and its officers, employees, agents and subcontractors. Further, the LLLP shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the LLLP, its subcontractors, its agents or its employees under or in connection with this Agreement. The LLLP shall hold harmless and indemnify the City, the Foundation and their agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to court costs and attorneys' fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged. The LLLP shall, upon written demand by the City or the Foundation, assume and defend at the LLLP's sole expense any and all such claims or legal actions. Nothing contained herein shall be deemed an expressed or implied waiver of the sovereign immunity of the City. Notwithstanding the foregoing, the LLLP shall not be obligated to indemnify the City for any claims, damages, or other liability arising as a result of the negligence or willful misconduct of the City or its agents or employees.

23. **Reserved.**

24. **Nondiscrimination.**

(a) ***Civil Rights Act Compliance.*** During the performance of this Agreement, the LLLP agrees, pursuant to Resolution No. 74-R8-11 adopted February 25, 1974 by the Council of the City of Richmond, to comply fully with Titles VI and VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder. By entering into this Agreement, the LLLP certifies that it has complied with Titles VI and VII of the Civil Rights Act of 1964, as amended.

(b) ***City and Va. Code Compliance.*** Pursuant to City Code § 74-74 and Va. Code § 2.2-4311:

(1) During the performance of this Agreement, the LLLP agrees as follows:

a. The LLLP shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the LLLP. The LLLP agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The LLLP, in all solicitations or advertisements for employees placed by or on behalf of the LLLP, shall state that such LLLP is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(2) During the performance of this Agreement, the LLLP shall include the provisions of subsection (1) of this section in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

(c) ***Other Nondiscrimination Laws.*** Where applicable, the Virginians with Disabilities Act, the federal Americans with Disabilities Act and the federal Rehabilitation Act shall apply to the LLP and its subcontractors.

## **25. Notices.**

All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the City: Harry E. Black  
Deputy Chief Administrative Officer  
900 East Broad Street, Room 201  
Richmond, Virginia 23219  
Facsimile No.: (804) 646-3027  
Telephone No.: (804) 646-7978

With a copy to: City Attorney  
City of Richmond  
900 East Broad Street, Room 300  
Richmond, Virginia 23219  
Facsimile No.: (804) 646-6653  
Telephone No.: (804) 646-7940

To the Foundation: Mr. J. Robert Mooney  
Virginia Performing Arts Foundation  
111 Virginia Street, Suite 402  
Richmond, Virginia 23219  
Facsimile No.: (804) 327-5753  
Telephone No.: (804) 327-5755

With a copy to: William G. Homiller  
Troutman Sanders LLP  
P. O. Box 1122  
Richmond, Virginia 23218  
Facsimile No.: (804) 698-6033  
Telephone No.: (804) 697-1288

To the LLLP: Thomas F. Farrell II  
Chief Executive Officer  
Dominion Resources Services Inc.  
120 Tredegar Street  
Richmond, Virginia 23219  
Facsimile No.: (804) 819-2394  
Telephone No.: (804) 819-2112

With a copy to: John W. Bates, III  
McGuireWoods LLP  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Facsimile No.: (804) 775-1061  
Telephone No.: (804) 775-4302

Any party may, upon prior written notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three days after sending if sent by certified mail, return receipt requested.

**26. Successors and Assigns.**

(a) Neither the LLLP nor the Foundation may, other than to a successor entity, without the prior written consent of the City, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement.

(b) If any party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation, including any documentation filed with the State Corporation Commission.

(c) Except as expressly otherwise provided, this Agreement may not be assigned without the prior written consent of the parties to this Agreement.

(e) All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**27. Time of the Essence.**

The parties hereto agree that time is of the essence in the performance of this Agreement. The LLLP understands that the completion of the Construction Work within the timeframes set forth in the Project Schedule and the guidelines specified in this Agreement is essential to this Agreement's success. The LLLP shall proceed expeditiously with adequate forces and make diligent efforts to keep the Project on schedule.

**28. Independent Contractors.**

For purposes of this Agreement and the other Project Agreements, the LLLP and Foundation shall be considered independent contractors. It is expressly understood and agreed by the parties hereto that neither the LLLP nor the Foundation, in performing its obligations under this Agreement, shall be deemed an agent, employee or partner of the City. No person performing any obligation of the Foundation or the LLLP under this Agreement shall be deemed an agent or employee of the City.

**29. No Waiver.**

(a) The failure of any party to insist upon the strict performance of any provisions of this Agreement, the failure of any party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future or continuing waiver of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement, or to relieve the other party from the full performance of its obligations under this Agreement.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the waiving party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

**30. Cooperation.**

The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate in writing representatives with the authority to make decisions binding upon such party (subject in the case of the City to those matters requiring a vote by the City Council or other voting body) so as to not unduly delay the Project schedule.

**31. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

**32. Entire Agreement.**

(a) This Agreement (including the exhibits and documents incorporated by reference herein or attached hereto) constitutes both a complete and exclusive statement and the final written expression of all the terms of this Agreement and of the entire understanding between the parties relating to the specific matters covered herein. All prior or contemporaneous

oral or written agreements, understandings, representations or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each party hereto, or its permitted successor or assignee. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

(b) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement.

**33. Limitation on the LLLP's Contracting Powers.**

Other than Project Agreements executed by the City, the LLLP shall have no right or authority to enter into, deliver or perform any contracts or agreements pertaining to the Project which purport to bind the City or which are contrary to the terms of this Agreement without the express prior written consent of the City. The City may withhold or condition its consent in its sole and absolute discretion.

**34. Liability of the City.**

The Foundation and the LLLP understand and acknowledge that the City has not agreed to provide any indemnification or hold harmless agreements running either to the Foundation or the LLLP or to any other party. No provision, covenant or agreement contained in this Agreement shall be deemed to be a waiver of the sovereign immunity of the City from tort or other liability.

**35. Governing Law and Forum Choice.**

(a) ***Governing Law.*** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City, the Foundation and the LLLP in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the



Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

(b) ***Alternative Dispute Resolution.*** The Mayor, with the concurrence of the City Attorney, may agree in writing on behalf of the City to submit particular disputes arising from this Contract to arbitration and to utilize mediation and other alternative dispute resolution procedures; however, any such procedures entered into by the City shall be nonbinding. (*See City Code § 74-195.*)

(c) ***Forum and Venue Choice.*** Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in a federal or state court located in the city of Richmond, Virginia. The Foundation and the LLLP accept the personal jurisdiction of any court in which an action is brought pursuant to this article for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action.

### **35.1 Audit.**

In addition to the rights reserved by the City under Section 11 of this Agreement, the City reserves the right to audit all aspects of this Agreement, including but not necessarily limited to (i) the Foundation's and the LLLP's financial capability and accounting system, (ii) the basis for progress payments and (iii) the Foundation's and the LLLP's compliance with applicable laws. The City further reserves the right to review, on demand and without notice, all files of the the LLLP or any subcontractor or vendor employed by the LLLP to provide services or commodities under this Agreement where payments by the City are based on records of time, salaries, materials or actual expenses.

### **35.2 No Third-Party Beneficiaries.**

Notwithstanding any other provision of this Agreement, the City, the Foundation and the LLLP hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Foundation or the LLLP; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Foundation or the LLLP under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase

“individual or entity” means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

36. **Reserved.**

37. **Reserved.**

38. **Construction and Interpretation of Agreement.**

(a) ***Construction and Interpretation.*** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm’s length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

(b) ***Severability.*** If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties hereto agree to negotiate in good faith appropriate amendments to or replacements of provisions of the Agreement that are illegal, invalid or unenforceable in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement.

(c) ***Captions.*** This Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles shall not affect the construal, interpretation or meaning of this Agreement.

(d) **References.** References in this document to this “Agreement” mean, refer to and include this document as well as any riders, exhibits, addenda and attachments hereto, which are hereby incorporated herein by reference, or other documents expressly incorporated by reference in this document. Any references to any covenant, condition, obligation or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this Agreement and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement unless the context thereof clearly requires otherwise. Unless expressly provided otherwise, all references to Sections refer to the Sections set forth in this Agreement. Unless otherwise stated in this Agreement, words which have well known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning. References in this Agreement to provisions of the “City Code” (i.e., the Code of the City of Richmond) or the “Va. Code” (i.e., the Code of Virginia) shall be deemed to refer to those provisions as they may be amended from time to time.

(e) **Gender and Number.** As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

### **38.1 Order of Precedence.**

The Project Agreements, as set forth below, are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent. In the event of any conflict among the Project Agreements, the order of precedence established by this section shall determine which document controls. This Agreement shall consist of the following Project Agreements, listed in order of precedence from highest to lowest:

- (1) This Comprehensive Agreement.
- (2) The City Lease (Exhibit D) or the Foundation Lease (Exhibit E), as applicable.
- (3) The City Management Agreement or the LLLP Management Agreement, as applicable.

- (4) The drawings, plans, schedules, specifications and other documents approved as described in Sections 7 of this Agreement.
- (5) The Scope Documents.
- (6) The Construction Contract.
- (7) The City of the Future Program Intracity Correspondence.
- (8) The Project Schedule.
- (9) The Schedule of Payments.

**39. Exhibits.**

The following exhibits are hereby deemed to be part of this Agreement:

Exhibit A — Reserved.  
Exhibit B — Reserved.  
Exhibit C — Carpenter Deed  
Exhibit C-1 — Reserved.  
Exhibit C-2 — Reserved.  
Exhibit D — City Lease  
Exhibit E — Foundation Lease  
Exhibit F — Quitclaim Deed  
Exhibit G — Reserved.  
Exhibit H — Reserved.  
Exhibit I — Reserved.  
Exhibit J — Reserved.  
Exhibit K — RPAC Agreement  
Exhibit L — Design and Development Services

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

**VIRGINIA PERFORMING ARTS FOUNDATION,**  
a Virginia non-stock corporation

By: J. Robert Mooney  
Name: J. ROBERT MOONEY  
Title: VICE CHAIRMAN

Date: 9/14/07

**RICHMOND PERFORMING ARTS CENTER  
L.L.L.P.,** a Virginia limited liability limited partnership

By: RPAC, INC., a Virginia corporation and its general partner

By: Thomas Farber  
Name: THOMAS FARBER  
Title: Chairman

Date: 9/14/07

**THE CITY OF RICHMOND,**  
a municipal corporation of the Commonwealth of Virginia

By: Harry Black  
Name: HARRY BLACK  
Its: Deputy CAO

Date: 9/14/07

Approved As to Form

By: [Signature]  
City Attorney

EXHIBIT A

Reserved.

EXHIBIT B

Reserved.

EXHIBIT C

[Carpenter Deed]

Prepared by:  
Troutman Sanders LLP  
Troutman Sanders Building  
1001 Haxall Point  
Richmond, Virginia 23219

Consideration: \$10.00  
Actual Value: \$ \_\_\_\_\_

Tax Parcel Nos. W0000009018A, W0000009018B

**THIS DEED IS EXEMPT FROM GRANTEE'S TAX PURSUANT TO SECTION 58.1-811(A)(3) OF THE CODE OF VIRGINIA (1950), AS AMENDED.**

**THIS DEED** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between **VIRGINIA PERFORMING ARTS FOUNDATION**, a Virginia non-stock corporation ("Grantor"), and **THE CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("Grantee").

**W I T N E S S E T H:**

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby bargains, sells, grants and conveys with Special Warranty of Title, unto Grantee all that certain real property located in the City of Richmond, Virginia, and more particularly described in Exhibit A, attached hereto and by this reference made a part hereof (the "Property").

This conveyance is made subject to all restrictions, covenants, conditions, encumbrances and easements of record, insofar as they may legally affect the Property or any part thereof.

[SIGNATURES ON FOLLOWING PAGE]



Grantee's Address:

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IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed pursuant to due authorization.

VIRGINIA PERFORMING ARTS  
FOUNDATION, a Virginia non-stock corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CITY OF RICHMOND, VIRGINIA,  
a municipal corporation of the Commonwealth of  
Virginia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007,  
by \_\_\_\_\_, who is \_\_\_\_\_ of the Virginia Performing Arts  
Foundation, a non-stock corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007,  
by \_\_\_\_\_, who is \_\_\_\_\_ of the City of Richmond, Virginia, a  
municipal corporation of the Commonwealth of Virginia, on behalf of the City under authority  
granted by Ordinance No. 2007-\_\_\_\_-\_\_\_\_, adopted \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

EXHIBIT A

To Deed from Virginia Performing Arts Foundation

[Legal Description of Carpenter Theatre]

EXHIBIT C-1

Reserved.

Exhibit C-2

Reserved.

EXHIBIT D

[Lease from City to LLLP]

**DEED OF LEASE**

**THIS DEED OF LEASE** (this "Lease") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007 (the "Commencement Date") by and between **THE CITY OF RICHMOND**, a municipal corporation of the Commonwealth of Virginia ("Landlord"), and **RICHMOND PERFORMING ARTS CENTER, L.L.P.**, a Virginia limited liability limited partnership ("Tenant").

**WITNESSETH:**

**Recitals**

Pursuant to that certain Comprehensive Agreement dated \_\_\_\_\_, 2007, (the "Comprehensive Agreement") between Landlord, Tenant and the Virginia Performing Arts Foundation, a Virginia non-stock corporation (the "Foundation"), the Foundation agreed to convey certain real estate located on the northeast corner of the intersection of Grace Street and 6<sup>th</sup> Street in the City of Richmond, containing the Carpenter Theatre and related improvements as more particularly described in Exhibit A, attached hereto as a part hereof (the "Property"), to Landlord, and Landlord agreed, upon such conveyance, to lease the Property to Tenant pursuant to the terms set forth in the Comprehensive Agreement.

The Foundation has conveyed the Property to Landlord by deed dated \_\_\_\_\_, 2007, recorded \_\_\_\_\_, 2007, in the Clerk's Office, Circuit Court, City of Richmond, as Instrument No. \_\_\_\_\_. Pursuant to the Comprehensive Agreement, Landlord now desires to lease the Property to Tenant and Tenant desires to lease the Property from Landlord in accordance with the terms and conditions of this Lease.

**Agreement**

NOW, THEREFORE, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, Landlord and Tenant hereby agree as follows:

1. **PREMISES.** Landlord demises and leases to Tenant and Tenant leases from Landlord the Property together with all of Landlord's easement rights and appurtenances thereto, all improvements, now or hereinafter located on the Property and all rights, privileges and easements benefiting, belonging or pertaining to the Property (collectively, the "Premises").
2. **TERM.** The term (the "Term") of this Lease shall commence on the Commencement Date and shall end on the date which is the fortieth (40<sup>th</sup>) anniversary of the Commencement Date.
3. **RENT.** Tenant covenants and agrees to pay Landlord rent for the Premises in the amount of \$1.00 per year.

4. **NET LEASE.** It is the intention of the parties to this Lease that the rent payable hereunder shall be completely and absolutely net to Landlord and that all costs, expenses and obligations of every kind and nature whatsoever directly relating to the Premises, including, but not limited to, insurance and taxes, shall be paid by Tenant.

5. **EASEMENTS.** Tenant may not enter into agreements creating easements to service the improvements on the Premises and any of Tenant's construction, restoration, expansion, maintenance, repair and operation of such improvements without Landlord's written approval, which shall not be unreasonably withheld. Landlord covenants and agrees to consent to any such agreements and to execute any documents, agreements and instruments satisfactory to Landlord and to take all other actions reasonably necessary to effectuate the same, all at Tenant's sole cost and expense.

6. **TAXES AND UTILITY EXPENSES.** Tenant shall, during the Term, pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges, sewer rents and other governmental impositions and charges of every kind and nature whatsoever affecting the Premises. Tenant shall, during the Term, as additional rent, pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, and other services and utilities whether public or private, furnished to Tenant.

7. **IMPROVEMENTS AND REPAIRS.** Tenant shall have the right to engage in construction and restoration activities on the Premises in accordance with the Comprehensive Agreement and add to and replace, maintain and repair at any time and from time to time such improvements as Tenant shall desire, provided that the same shall be in full compliance with all applicable building codes, ordinances, statutes, rules and regulations and with the Comprehensive Agreement. Until the expiration or sooner termination of the Term, title, right and interest to any improvements constructed on the Premises by Tenant and the building equipment and other items installed thereon by Tenant and to any alteration, change or addition thereto made by Tenant shall remain solely in Tenant; and Tenant shall be entitled to deduct all depreciation on its respective income tax returns from any such building or buildings, building equipment and/or other items, improvements, additions, changes or alterations. Upon the last day of the Term or the sooner termination thereof, title, right and interest to all buildings and improvements then on the Premises shall revert to Landlord.

7A. **NO SUBLEASES OR ASSIGNMENTS; MANAGEMENT AGREEMENTS.** Tenant shall not assign, sublet or otherwise transfer this Lease or all or any part of its interest therein unless and until Landlord has approved the form and content of such assignment, sublease or similar document, which approval shall not be unreasonably withheld, unless such assignment, sublease or other transfer is made in connection with the acquisition, earning, sale and syndication of Tax Credits (as defined in the Comprehensive Agreement). As allowed by the Comprehensive Agreement, Tenant may enter into a Management Agreement for the operation, maintenance and repair of the Premises. However, Tenant shall not enter into any Management Agreement until Landlord has approved the form and content thereof as required by the Comprehensive Agreement.

8. **COVENANT AGAINST LIENS.** If, because of any act or omission of Tenant or any subtenant or occupant of the Premises or any part thereof, any mechanic's lien or other lien (other than permitted mortgage liens, as hereinafter defined), charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order; and Tenant shall indemnify, defend with counsel satisfactory to Landlord and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including counsel fees, resulting therefrom.

9. **ACCESS TO PREMISES.** Upon reasonable prior notice, Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Premises or any part thereof during reasonable business hours and without unreasonably interfering with the conduct of business operations thereon to inspect and examine the same in accordance with the Comprehensive Agreement.

10. **INSURANCE.**

(a) Tenant shall provide at its expense, and keep in force during the Term, commercial general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of Virginia in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and property damage. Such policy or policies shall include Landlord as an additional insured. Tenant agrees to deliver certificates of such insurance to Landlord upon Landlord's reasonable request.

(b) During the Term, Tenant shall provide property insurance for the Premises in coverage amounts up to the replacement value thereof and shall keep all buildings and improvements now or hereinafter constructed on the Premises, whether or not constructed by Tenant, insured for the benefit of Landlord and Tenant, as their respective interests may appear, against loss or damage by fire and customary extended coverage, with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, in an amount not less than the full replacement value thereof. Such policy or policies shall name Landlord and Tenant as insureds thereunder as their respective interests may appear. Tenant agrees to deliver certificates of such insurance to Landlord upon Landlord's reasonable request.

(c) During any period during which Tenant or any subtenant or occupant of the Premises is conducting any construction activity whatsoever at the Premises, including, but not limited to, construction of improvements and repairs, replacements, alterations, modifications, additions and demolition thereof, Tenant shall keep or require its contractors and/or subtenants and occupants of the Premises to keep in full force and effect a policy of builder's risk insurance covering loss or damage to such improvements for the full replacement value thereof.

(d) Tenant shall, during the Term, be responsible for payment of all premiums for insurance coverage required by this Paragraph 10. All coverages provided by Tenant pursuant to this Paragraph 10 shall be primary as to any coverages maintained by Landlord.

11. **WAIVER OF SUBROGATION.** To the extent that insurance proceeds are



actually received in satisfaction of a loss which is required to be covered by insurance, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss, damage or injury, no matter how caused; and each party shall cause all insurance policies which it is obligated to maintain or cause to be maintained under this Lease to contain appropriate provisions recognizing this release and expressly waiving all rights of subrogation by the respective insurance carriers.

**12. DESTRUCTION AND DAMAGE.**

(a) In the event that the buildings and improvements now or hereafter placed on the Premises shall be damaged or destroyed, whether partially or entirely, by any cause whatsoever, then Tenant shall promptly and within a reasonable time after such damage or destruction, repair, restore or reconstruct or cause to be repaired, restored or reconstructed said damaged or destroyed improvements in such manner that after such repair, restoration or reconstruction, the condition thereof shall be at least equal to the condition thereof immediately prior to such damage or destruction.

(b) Damage to or destruction of all or any portion of the buildings, structures and fixtures located on the Premises caused by fire, the elements, or any other cause whatsoever, whether or not without fault of Tenant, shall not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in rent or other sums, moneys, costs, charges or expenses required to be paid by Tenant hereunder or otherwise affect the respective obligations of the parties hereto.

(c) Notwithstanding the foregoing provisions of this Paragraph 12, it is agreed by and between Landlord and Tenant that in the event the improvements on the Premises are damaged, destroyed by fire or other casualty at any time during the last two (2) years of the Term of this Lease, in lieu of rebuilding and restoring the improvements located on the Premises to the condition in which they were immediately prior to such damage or destruction, Tenant, at its option, may terminate this Lease by giving written notice of such termination to Landlord; provided, however, that Tenant shall pay over all insurance proceeds immediately upon receipt thereof to Landlord, which proceeds shall become the property of the Landlord.

(d) It is hereby specifically agreed that if this Lease is not terminated as permitted in this Paragraph 12, all insurance proceeds paid and delivered on account of any damage or destruction, less the costs, if any, of such recovery, including, but not limited to, reasonable attorneys' fees and costs, shall be used by Tenant for the purpose of paying the cost of any and all repairs and reconstruction required to be made by Tenant under the terms of this Lease.

**13. TENANT'S FINANCING.** Landlord acknowledges that Tenant's financing for the construction and restoration work on the Premises pursuant to the Comprehensive Agreement depends upon the availability, acquisition, earning, sale and syndication of certain historic tax credits and new market credits. Landlord hereby agrees to cooperate with Tenant, at no expense to Landlord, to enter into such addenda, amendments or other instruments adding, modifying or canceling certain terms of this Lease, to the extent permitted by law and to the extent such additions, modifications or cancellations are not materially adverse to Landlord, as reasonably required to permit Tenant to obtain its financing from the acquisition, earning, sale and

syndication of historic tax credits and new market credits, pursuant to the Comprehensive Agreement.

**14. EMINENT DOMAIN.**

If all or a portion of the Premises is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation for purposes of this Lease), this Lease shall, at Tenant's option, terminate as of the date title to the condemned real estate vests in the condemnor, and neither party shall thereafter have any liability hereunder. If Tenant elects not to terminate this Lease pursuant to the preceding sentence, Tenant may do such work as may be reasonably necessary to restore the portion of the Premises not taken to tenantable condition for Tenant's uses, but shall not be required to expend more than the net award Landlord and/or Tenant receives for restoration of the Premises. If a part or all of the Premises shall be taken or condemned during the Term of this Lease, all compensation awarded upon such condemnation or taking shall go to Tenant.

**15. INDEMNITY.**

(a) Tenant shall indemnify and save harmless Landlord from and against any and all claims, liabilities, damages, penalties, judgments, causes of action, proceedings, suits, costs and expenses, including, but not limited to, fees and costs of attorneys and other professionals and accountants, arising out of, in connection with or in any way related to any injury or death to person or property sustained by anyone in and about the Premises, resulting from, out of or in connection with the use or occupancy of the Premises, resulting from or out of or in connection with the negligent or willful acts or omissions of Tenant or its officers, directors, agents, employees, contractors, servants, tenants, concessionaires, licensees, invitees, successors or assigns, or related to or arising out of or in connection with any default by Tenant under this Lease or any failure by Tenant to fully and completely perform and comply with its obligations under this Lease.

(b) Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons at any time on the Premises, including, but not limited to, any damage or injury to Tenant or to any of Tenant's officers, directors, agents, servants, employees, contractors, customers, licensees, invitees, concessionaires, sublessees, successors or assigns.

**16. NO SERVICES BY LANDLORD.** Landlord shall not be required to furnish any service or facility to the Premises or the buildings and improvements now or hereafter located thereon, including but not limited to heat, water, light and power, and shall not be liable to Tenant or otherwise for any failure of water supply or electric current, or of any service by any utility, nor for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Premises or the buildings and improvements to be erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or subsurface, or from any other place, nor from interference with land or other incorporeal hereditaments or easements, however caused, except if due to the gross negligence or willful misconduct of Landlord. Landlord shall not be required to make any repairs or alterations in or to the Premises or the buildings and improvements to be

erected thereon.

17. **MEMORANDUM OF LEASE.** Landlord and Tenant agree, at the other's request and at the sole expense of the requesting party, to execute a Memorandum of Lease in recordable form, and in form and substance reasonably satisfactory to Landlord and Tenant, setting forth such provisions hereof as may be required by applicable law, including a description of the Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may reasonably request.

18. **WAIVER.** No failure of Landlord or Tenant to complain of any act or omission on the part of the other no matter how long the same shall continue shall be deemed to be a waiver by Landlord or Tenant of any of its rights under this Lease. No waiver by Landlord or Tenant, at any time, express or implied, of any breach of any of the agreements or provisions contained in this Lease shall be construed to be a waiver of any subsequent breach of the same or of any other provisions in this Lease. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

19. **NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) delivered in person, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested or (iii) sent by Federal Express (or such other express delivery service promising next day delivery) directed to Landlord at \_\_\_\_\_ and to Tenant at \_\_\_\_\_, or such other address as either party may designate by notice given from time to time in accordance with this Paragraph. All such notices shall be deemed to be given upon receipt when delivered in person or upon deposit in the United States mail as hereinabove provided.

19A. **DEFAULT.** If Tenant defaults in its obligations under this Lease or under the Comprehensive Agreement, and fails to cure any default within forty-five (45) days of receipt of written demand from Landlord (or longer provided Tenant is diligently pursuing the cure of such default to completion), Landlord, at its option, may terminate this Lease.

20. **Reserved.**

21. **GOVERNING LAW.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia.

22. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

23. **INTERPRETATION.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The paragraph headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be

executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

24. **ENTIRE AGREEMENT.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease and the Comprehensive Agreement. This Lease shall not be modified or canceled except by writing subscribed by all parties. To the extent there is a conflict between this Lease and the Comprehensive Agreement, the terms of this Lease shall control.

25. **PARTIES.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

26. **NO JOINT VENTURE.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Lease of which they are a part, shall be construed as creating or constituting Landlord as co-partner or joint venturer with Tenant, nor shall same be construed in any manner as making Landlord liable for the debts, defaults, obligations or lawsuits of Tenant, or its sublessees and assigns.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed pursuant to due authority.

**LANDLORD:**

**THE CITY OF RICHMOND, VIRGINIA**,  
a municipal corporation of the Commonwealth of  
Virginia

Date: \_\_\_\_\_, 2007

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Under authority granted by Ord. No. 2007-\_\_ - \_\_, adopted \_\_\_\_\_, 2007.

**TENANT:**

**RICHMOND PERFORMING ARTS CENTER,  
L.L.L.P.**, a Virginia limited liability limited  
partnership

**By: RPAC, Inc.**, a Virginia corporation and  
its general partner

Date: \_\_\_\_\_, 2007

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A  
To Lease from City of Richmond

[Legal Description of Property]

## EXHIBIT E

[Lease from Foundation to LLLP]

### **DEED OF LEASE**

**THIS DEED OF LEASE** (this "Lease") is dated as of the \_\_\_\_ day of \_\_\_\_, 2007 by and between **VIRGINIA PERFORMING ARTS FOUNDATION**, a Virginia non-stock corporation ("Landlord"), and **RICHMOND PERFORMING ARTS CENTER, L.L.L.P.**, a Virginia limited liability limited partnership ("Tenant").

### **WITNESSETH:**

#### **Recitals**

Pursuant to that certain Comprehensive Agreement dated \_\_\_\_, 2007, (the "Comprehensive Agreement") between Landlord, Tenant and the City of Richmond, a municipal corporation of the Commonwealth of Virginia, the Foundation agreed to lease to Tenant certain real estate located on the northwest corner of the intersection of Grace Street and 7<sup>th</sup> Street in the City of Richmond, for the construction and operation of a building comprised of fine arts facilities and venues commonly referred to together as "Dorothy Pauley Square," as more particularly described in Exhibit A, attached hereto as a part hereof (the "Property"). In accordance with the Comprehensive Agreement, Landlord now desires to lease the Property to Tenant and Tenant desires to lease the Property from Landlord in accordance with the terms and conditions of this Lease.

#### **Agreement**

NOW, THEREFORE, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, Landlord and Tenant hereby agree as follows:

1. **PREMISES.** Landlord demises and leases to Tenant and Tenant leases from Landlord the Property together with all of Landlord's easement rights and appurtenances thereto, all improvements, now or hereinafter located on the Property and all rights, privileges and easements benefiting, belonging or pertaining to the Property (collectively, the "Premises").
2. **TERM.** The term (the "Term") of this Lease shall commence on the date of this Lease (the "Commencement Date") and shall end on the date which is the fiftieth (50th) anniversary of the Commencement Date.
3. **RENT.** Tenant covenants and agrees to pay Landlord rent for the Premises in the amount of \$1.00 per year.
4. **NET LEASE.** It is the intention of the parties to this Lease that the rent payable hereunder shall be completely and absolutely net to Landlord and that all costs, expenses and obligations of every kind and nature whatsoever directly relating to the Premises, including, but not limited to, insurance and taxes, shall be paid by Tenant.

5. **EASEMENTS.** Tenant shall have the right to enter into agreements creating easements to service the improvements on the Premises and any of Tenant's construction, restoration, expansion, maintenance, repair and operation of such improvements. Landlord covenants and agrees to consent to any such agreements and to execute any documents, agreements and instruments satisfactory to Landlord and to take all other actions reasonably necessary to effectuate the same, all at Tenant's sole cost and expense.

6. **TAXES AND UTILITY EXPENSES.** Tenant shall, during the Term, pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges, sewer rents and other governmental impositions and charges of every kind and nature whatsoever affecting the Premises. Tenant shall, during the Term, as additional rent, pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, and other services and utilities whether public or private, furnished to Tenant and/or the subtenants and occupants of the Premises.

7. **IMPROVEMENTS AND REPAIRS.** Tenant shall have the right to engage in construction and restoration activities on the Premises in accordance with the Comprehensive Agreement and add to and replace, maintain and repair at any time and from time to time such improvements as Tenant shall desire, provided that the same shall be in full compliance with all applicable building codes, ordinances, statutes, rules and regulations. Until the expiration or sooner termination of the Term, title to any improvements constructed on the Premises by Tenant or Tenant's sublessees or occupants of the Premises and the building equipment and other items installed thereon by Tenant or Tenant's subtenants or other occupants of the Premises claiming rights thereto through or under Tenant and to any alteration, change or addition thereto made by Tenant or Tenant's subtenants or other occupants of the Premises shall remain solely in Tenant or such subtenants or other occupants; and Tenant or its subtenants or other occupants of the Premises claiming rights through or under Tenant shall be entitled to deduct all depreciation on their respective income tax returns from any such building or buildings, building equipment and/or other items, improvements, additions, changes or alterations. Upon the last day of the Term or the sooner termination thereof, title to all buildings and improvements then on the Premises shall revert to Landlord.

8. **COVENANT AGAINST LIENS.** If, because of any act or omission of Tenant or any subtenant or occupant of the Premises or any part thereof, any mechanic's lien or other lien (other than permitted mortgage liens, as hereinafter defined), charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order; and Tenant shall indemnify, defend with counsel satisfactory to Landlord and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including counsel fees, resulting therefrom.

9. **ACCESS TO PREMISES.** Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Premises or any part thereof during reasonable business hours and without unreasonably interfering with the conduct of business operations thereon to inspect and examine the same in accordance with the Comprehensive



Agreement.

**10. INSURANCE.**

(a) Tenant shall provide at its expense, and keep in force during the Term, commercial/general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of Virginia in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and property damage. Such policy or policies shall include Landlord as an additional insured. Tenant agrees to deliver certificates of such insurance to Landlord upon Landlord's reasonable request.

(b) During the Term, Tenant shall keep all buildings and improvements now or hereinafter constructed on the Premises, whether or not constructed by Tenant, insured for the benefit of Landlord and Tenant, as their respective interests may appear, against loss or damage by fire and customary extended coverage, with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, in an amount not less than the full replacement value thereof. Such policy or policies shall name Landlord and Tenant as insureds thereunder as their respective interests may appear. Tenant agrees to deliver certificates of such insurance to Landlord upon Landlord's reasonable request.

(c) During any period during which Tenant or any subtenant or occupant of the Premises is conducting any construction activity whatsoever at the Premises, including, but not limited to, construction of improvements and repairs, replacements, alterations, modifications, additions and demolition thereof, Tenant shall keep or require its contractors and/or subtenants and occupants of the Premises to keep in full force and effect a policy of builder's risk insurance covering loss or damage to such improvements for the full replacement value thereof.

(d) Tenant shall, during the Term, be responsible for payment of all premiums for insurance coverage required by this Paragraph 10.

**11. WAIVER OF SUBROGATION.** To the extent that insurance proceeds are actually received in satisfaction of a loss which is required to be covered by insurance, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss, damage or injury, no matter how caused; and each party shall cause all insurance policies which it is obligated to maintain or cause to be maintained under this Lease to contain appropriate provisions recognizing this release and expressly waiving all rights of subrogation by the respective insurance carriers.

**12. DESTRUCTION AND DAMAGE.**

(a) In the event that the buildings and improvements now or hereafter placed on the Premises shall be damaged or destroyed, whether partially or entirely, by any cause whatsoever, then Tenant shall promptly and within a reasonable time after such damage or destruction, repair, restore or reconstruct or cause to be repaired, restored or reconstructed said damaged or destroyed improvements in such manner that after such repair, restoration or reconstruction, the condition thereof shall be at least equal to the condition thereof immediately prior to such damage or destruction.

(b) Damage to or destruction of all or any portion of the buildings, structures and fixtures located on the Premises caused by fire, the elements, or any other cause whatsoever, whether or not without fault of Tenant, shall not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in rent or other sums, moneys, costs, charges or expenses required to be paid by Tenant hereunder or otherwise affect the respective obligations of the parties hereto.

(c) Notwithstanding the foregoing provisions of this Paragraph 12, it is agreed by and between Landlord and Tenant that in the event the improvements on the Premises are damaged, destroyed by fire or other casualty at any time during the last two (2) years of the Term of this Lease, in lieu of rebuilding and restoring the improvements located on the Premises to the condition in which they were immediately prior to such damage or destruction, Tenant, at its option, may terminate this Lease by giving written notice of such termination to Landlord; provided, however, that Tenant shall, prior to the effective date of such termination, pay over all insurance proceeds to Landlord, which proceeds shall become the property of the Landlord.

(d) It is hereby specifically agreed that if this Lease is not terminated as permitted in this Paragraph 12, all insurance proceeds paid and delivered on account of any damage or destruction, less the costs, if any, of such recovery, including, but not limited to, reasonable attorneys' fees and costs, shall be used by Tenant for the purpose of paying the cost of any and all repairs and reconstruction required to be made by Tenant under the terms of this Lease.

(e) In the event that the amount of the insurance proceeds is insufficient to pay the actual cost of repair or reconstruction, Landlord shall pay any deficiency.

13. **TENANT'S FINANCING.** Landlord acknowledges that Tenant's financing for the construction and restoration work on the Premises pursuant to the Comprehensive Agreement depends upon the availability, acquisition, earning, sale and syndication of certain historic tax credits and new market credits. Landlord hereby agrees to cooperate with Tenant, at no expense to Landlord, to enter into such addenda, amendments or other instruments adding, modifying or canceling certain terms of this Lease, as reasonably required to permit Tenant to obtain its financing from the acquisition, earning, sale and syndication of historic tax credits and new market credits, pursuant to the Comprehensive Agreement.

14. **EMINENT DOMAIN.**

If all or a portion of the Premises is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation for purposes of this Lease), this Lease shall, at Tenant's option, terminate as of the date title to the condemned real estate vests in the condemnor, and neither party shall thereafter have any liability hereunder. If Tenant elects not to terminate this Lease pursuant to the preceding sentence, Tenant may do such work as may be reasonably necessary to restore the portion of the Premises not taken to tenantable condition for Tenant's uses, but shall not be required to expend more than the net award Landlord and/or Tenant receives for restoration of the Premises. If a part or all of the Premises shall be taken or condemned during the Term of this Lease, all compensation awarded upon such condemnation or taking shall go to Tenant.

15. **INDEMNITY.**

(a) Tenant shall indemnify and save harmless Landlord from and against any and all claims, liabilities, damages, penalties, judgments, causes of action, proceedings, suits, costs and expenses, including, but not limited to, fees and costs of attorneys and other professionals and accountants, arising out of, in connection with or in any way related to any injury or death to person or property sustained by anyone in and about the Premises, resulting from, out of or in connection with the use or occupancy of the Premises, resulting from or out of or in connection with the negligent or willful acts or omissions of Tenant or its officers, directors, agents, employees, contractors, servants, tenants, concessionaires, licensees, invitees, successors or assigns, or related to or arising out of or in connection with any default by Tenant under this Lease or any failure by Tenant to fully and completely perform and comply with its obligations under this Lease.

(b) Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons at any time on the Premises, including, but not limited to, any damage or injury to Tenant or to any of Tenant's officers, directors, agents, servants, employees, contractors, customers, licensees, invitees, concessionaires, sublessees, successors or assigns.

16. **NO SERVICES BY LANDLORD.** Landlord shall not be required to furnish any service or facility to the Premises or the buildings and improvements now or hereafter located thereon, including but not limited to heat, water, light and power, and shall not be liable to Tenant or otherwise for any failure of water supply or electric current, or of any service by any utility, nor for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Premises or the buildings and improvements to be erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or subsurface, or from any other place, nor from interference with land or other incorporeal hereditaments or easements, however caused, except if due to the gross negligence or willful misconduct of Landlord. Landlord shall not be required to make any repairs or alterations in or to the Premises or the buildings and improvements to be erected thereon.

17. **MEMORANDUM OF LEASE.** Landlord and Tenant agree, at the other's request and at the sole expense of the requesting party, to execute a Memorandum of Lease in recordable form, and in form and substance reasonably satisfactory to Landlord and Tenant, setting forth such provisions hereof as may be required by applicable law, including a description of the Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may reasonably request.

18. **WAIVER.** No failure of Landlord or Tenant to complain of any act or omission on the part of the other no matter how long the same shall continue shall be deemed to be a waiver by Landlord or Tenant of any of its rights under this Lease. No waiver by Landlord or Tenant, at any time, express or implied, of any breach of any of the agreements or provisions contained in this Lease shall be construed to be a waiver of any subsequent breach of the same or of any other provisions in this Lease. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

19. **NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) delivered in person, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested or (iii) sent by Federal Express (or such other express delivery service promising next day delivery) directed to Landlord at \_\_\_\_\_ and to Tenant at \_\_\_\_\_, or such other address as either party may designate by notice given from time to time in accordance with this Paragraph. All such notices shall be deemed to be given upon receipt when delivered in person or upon deposit in the United States mail as hereinabove provided.

20. **RESERVED.**

21. **GOVERNING LAW.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia.

22. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

23. **INTERPRETATION.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The paragraph headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

24. **ENTIRE AGREEMENT.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease and the Comprehensive Agreement. This Lease shall not be modified or canceled except by writing subscribed by all parties. To the extent there is a conflict between this Lease and the Comprehensive Agreement, the terms of this Lease shall control.

25. **PARTIES.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

26. **NO JOINT VENTURE.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Lease of which they are a part, shall be construed as creating or constituting Landlord as co-partner or joint venturer with

Tenant, nor shall same be construed in any manner as making Landlord liable for the debts, defaults, obligations or lawsuits of Tenant, or its sublessees and assigns.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed pursuant to due authority.

**LANDLORD:**

**VIRGINIA PERFORMING ARTS  
FOUNDATION**, a Virginia non-stock corporation

Date: \_\_\_\_\_, 2007

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**RICHMOND PERFORMING ARTS CENTER,  
L.L.P.**, a Virginia limited liability limited  
partnership

**By: RPAC, Inc.**, a Virginia corporation and  
its general partner

Date: \_\_\_\_\_, 2007

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A  
To Lease from Virginia Performing Arts Foundation

[Legal Description of Property]

EXHIBIT F

[Quitclaim Deed]

Prepared by:  
Troutman Sanders LLP  
P.O. Box 1122  
Richmond, Virginia 23218-1122

Tax Parcel No. W0000009001

**THIS DEED IS EXEMPT FROM GRANTOR'S TAX PURSUANT TO SECTION 58.1-811(C)(4) OF THE CODE OF VIRGINIA (1950), AS AMENDED.**

QUITCLAIM DEED

THIS QUITCLAIM DEED is made and dated as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia ("RRHA"), and VIRGINIA PERFORMING ARTS FOUNDATION, a Virginia non-stock corporation (the "Foundation").

WITNESSETH:

Recitals

By Deed of Gift dated August 3, 2004, recorded August 4, 2004, in the Clerk's Office, Circuit Court, City of Richmond, Virginia (the "Clerk's Office") as Instrument No. 04-026128 (the "Source Deed"), the Foundation acquired from RRHA certain real property located in the City of Richmond (the "Property"), all as more particularly described in the Source Deed.

By Transfer Agreement dated August 3, 2004, by and between RRHA and the Foundation, the Foundation granted RRHA a right of reversion in the Property exercisable upon certain terms and conditions more particularly described in such agreement (the "Reversion Right").

In connection with the Foundation's plans to develop the Property, RRHA now desires to quitclaim and release its Reversion Right to the Foundation in order to terminate the Reversion Right as set forth herein.

Quitclaim and Release

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RRHA does hereby quitclaim and release to the Foundation, its successors and assigns, all of RRHA's Reversion Right with respect to the Property. The parties hereto acknowledge and agree that the Reversion Right is hereby terminated and is null and void and of no further effect.



WITNESS the following signatures and seals.

RICHMOND REDEVELOPMENT AND  
HOUSING AUTHORITY, a political subdivision of  
the Commonwealth of Virginia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

VIRGINIA PERFORMING ARTS  
FOUNDATION, a Virginia non-stock corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007,  
by \_\_\_\_\_, who is \_\_\_\_\_ of Richmond Redevelopment and Housing  
Authority, a political subdivision of the Commonwealth of Virginia, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007,  
by \_\_\_\_\_, who is \_\_\_\_\_ of the Virginia Performing Arts  
Foundation, a non-stock corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

EXHIBIT G

Reserved.

EXHIBIT H

Reserved.

EXHIBIT I

Reserved.

EXHIBIT J

Reserved.

## EXHIBIT K

[RPAC Agreement]

### **RPAC AGREEMENT**

THIS RPAC AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2007 by and among the City of Richmond, Virginia, a municipal corporation (the "City") and Virginia Performing Arts Foundation, a Virginia nonstock corporation ("VAPAF" and together with the City, the "Parties").

#### WITNESSETH:

WHEREAS, VAPAF owns 100% (the "Company Stock") of the outstanding capital stock of RPAC, Inc., a Virginia stock corporation ("RPAC"); and

WHEREAS, the City has by entering into a Comprehensive Agreement with the Foundation and RPAC agreed to lease certain property to RPAC and to pay certain amounts for the construction and operation of certain City-owned facilities to be constructed and operated by RPAC; and

WHEREAS, the City and VAPAF desire to establish the composition of RPAC's board of directors (the "Board"), to establish procedures for nominations and elections to the Board, and to restrict the sale, assignment, transfer, or other disposition of the Company Stock.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, representations, warranties, covenants and agreements contained herein, the parties to this Agreement agree as follows:

#### 1. Board of Directors.

(a) The Parties hereby acknowledge the election to the Board by RPAC's incorporator of the fifteen (15) directors listed on Exhibit A attached hereto.

(b) From and after the date of this Agreement, each Party agrees to the following procedures pertaining to the election of the members of the Board:

(i) Prior to each RPAC annual meeting (other than the first annual meeting), the Board will submit to the Mayor of the City of Richmond (the "Mayor") the names of the persons that the Board nominates for election to the Board.

(ii) If approved by the Mayor, such persons shall stand for election at the annual meeting; if not approved by the Mayor, the Board will submit additional persons to the Mayor until the appropriate number of persons will stand for election at the annual meeting, consistent with RPAC's bylaws.

(iii) Once the nominations are approved by the Mayor, members of the Board will be elected by the vote of RPAC's shareholder at the annual meeting or at a special

meeting called for that purpose. VAPAF agrees that it shall not vote for any person not approved by the Mayor.

(iv) A vacancy on the Board, including a vacancy resulting from the removal of a director or an increase in the number of directors shall be filled by an appointment made by the Mayor, and may, in the case of a resignation that will become effective at a specified later date, be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

2. Restrictions on Transfer of Company Stock. VAPAF agrees not to sell, transfer, assign, pledge, encumber or otherwise dispose of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of law or otherwise) any interest (legal or beneficial) in any Company Stock (a "Transfer"), except Transfers of Company Stock that are expressly approved by all of the Parties to this Agreement.

3. Transfers in Violation of Agreement. Any Transfer or attempted Transfer of any Company Stock in violation of this Agreement shall be *void ab initio*.

4. Amendment. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement will be effective against the Parties unless such modification, amendment or waiver is approved in writing by the all of the Parties hereto.

5. Entire Agreement. Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

6. Successors and Assigns. Except as otherwise provided herein, this Agreement will bind and inure to the benefit of and be enforceable by the Parties and their successors and assigns.

7. Counterparts. This Agreement may be executed in separate counterparts each of which will be an original and all of which taken together will constitute one and the same agreement.

8. Governing Law. All issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

\* \* \* \* \*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**THE CITY:**

**The City of Richmond, Virginia**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VAPAF:**

**Virginia Performing Arts Foundation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **Exhibit A**

### **Initial Board of Directors**

1. Jean Boone
2. Theodore L. Chandler, Jr.
3. Joseph C. Farrell
4. Michael D. Fraizer
5. William H. Goodwin, Jr.
6. Robert J. Grey, Jr.
7. Eva Teig Hardy
8. C.T. Hill
9. Susan Holsworth
10. John A. Luke, Jr.
11. Marvette Monroe
12. Michael E. Szymanczyk
13. Richard E. Toscan
14. James E. Ukrop
15. Thomas F. Farrell II (Chairman)

## EXHIBIT L

### [Design and Development Services]

(a) Review any existing reports regarding the sites, including, without limitation, subsurface tests, soil tests, borings, water surveys, wetlands studies, topographical surveys, sewage disposal surveys and drainage determinations. No additional services and reports are required to be done for the site to provide for the development of the site contemplated in this Agreement within the scope of the Developer's Work required hereunder.

(b) Manage the site design and site development for the construction-related aspects of the Project and have all site work done necessary to prepare the sites for the Project, including without limitation, preparing site plans and obtaining the approval thereof, clearing, demolition, grubbing, and grading, doing stormwater management, utilities, curb and gutter, landscaping, and doing on-site road improvements, including the submission and approval of any documents, reports or applications required for construction and improvement projects in the City of Richmond and the Commonwealth of Virginia. The LLLP shall take all other actions necessary so that the site for the Construction Work includes all the work and amenities identified in the Scope Documents. The Project Team members are more particularly described in the Conceptual Proposal.

(c) Provide all permitting and obtain all approvals for the Project that are required for site work, construction, and occupancy.

(d) Cause drawings, plans, schedules, specifications and other documents for the Project to be prepared.

(e) Design and construct the Project to meet or exceed the standards specifically identified or established in the Scope Documents and the Construction Contract.